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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,023	01/15/2002	David D. Chase	74294-013	5503
29493 7590 03/23/2007 HUSCH & EPPENBERGER, LLC 190 CARONDELET PLAZA SUITE 600 ST. LOUIS, MO 63105-3441			EXAMINER FOREMAN, JONATHAN M	
			ART UNIT 3736	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/23/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/050,023

Applicant(s)

CHASE ET AL.

Examiner

Jonathan ML Foreman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-48, 50, 52 and 53 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 and 15-39 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 40-48, 50, 52 and 53 is/are allowed.
- 6) ☒ Claim(s) 9-13 is/are rejected.
- 7) ☒ Claim(s) 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

New grounds of rejection are contained within this Office Action. Accordingly this action has been made Non-Final.

#### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,884,562 to Stone.

In regard to claims 9 and 10, Stone discloses a support belt body (Figure 3) sized to fit about the lower trunk of a human user, said support belt body having a front designed to be worn along the front of the lower trunk of the human user, a back designed to be worn along the back of the lower trunk of the human user, and sides (20, 22) designed to be worn along the sides of the human user, the support belt body being composed of elastic material (Col. 3, lines 9 – 17); first and second sets of protrusions (28; Figure 4) disposed along the sides of the support belt body so as to press against the sides of the lower trunk of the human user during use, at positions substantially 90° and 270° from the human user's navel (Col. 2, lines 38 – 42); said protrusions of each set being of a size to apply pressure at multiple recognizably separate points along each side of the lower trunk of the human user, whereby the pressure applied by the protrusions continually stimulates the user's muscles and thereby reduces any tendency of the muscles of the back of the human user to overcompensate in response to sudden or unexpected loading events.

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***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 11 – 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,884,562 to Stone.

In regards to claims 11, 13, Stone r discloses protrusions in a set and discloses multiple sizes of belts (Col. 3, line 65 – Col. 4, line 5), but fails to disclose the protrusions having a height from approximately one-eighth inch to one inch and being between approximately four millimeters and seventy millimeters measured center to center, from each other. However, a change in the size of a prior art device is a design consideration within the skill of the art. *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955). Here, modifying the size and spacing of the protrusions as disclosed by Miller be approximately one-eighth inch to one inch in height and between approximately four millimeters and seventy millimeters measured center to center would have been obvious to one having ordinary skill in the art at the time the invention was made in order to allow for the protrusions to urge against the iliac crests of individuals of different sizes.

5. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over 4,884,562 to Stone as applied to claim 11, and further in view of U.S. Patent No. 5,769,803 to Brossard.

In regards to claim 12, Stone discloses first and second sets of protrusions along the body of the support belt, but fails to disclose additional protrusions applying less pressure to the lower trunk of the user between the first and second sets of protrusions. However, Brossard discloses a set of

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protrusions (60; Figure 19) applying light pressure (Col. 10, lines 27 – 30) positioned on an area of a support belt lying between the positions of the protrusions as disclosed by Stone. It would have been obvious to one having ordinary skill in the art to modify the support belt as disclosed by Stone to include a set of protrusions as taught by Brossard in order to increase the reflex response of the muscle group (Abstract) located in the lumbar region.

***Allowable Subject Matter***

6. Claims 40 – 48, 50, 52 and 53 are allowed. Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

7. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



JMLF

